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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JON RENO ST. JAMES, Defendant and Appellant.	H042435 (Santa Clara County Super. Ct. No. 213382)

I. INTRODUCTION

Defendant Jon Reno St. James was the owner of a business called Party Bus of Santa Cruz. The decedent, Natasha Noland, was a passenger on one of defendant's party buses on July 27, 2012. Noland was involved in an altercation with another passenger, Colleen Martinez, when the two fell out the bus's faulty passenger door. The bus ran over Noland, who died. Martinez survived the fall with serious injuries. Defendant was not present at the time of Noland's death, but he had known for several months before the fatal accident that the passenger door on that bus was not operating properly and would sometimes open while the bus was carrying passengers. After a jury trial, defendant was convicted of involuntary manslaughter (Pen. Code, § 192, subd. (b))[1] and sentenced to a jail term of four years.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

On appeal, defendant contends that his conviction for involuntary manslaughter must be reversed because the evidence was insufficient to show that his alleged negligence as the owner of the company that operated the party bus was the proximate cause of Noland's death. Defendant asserts that there is evidence of two independent superseding causes—the intoxicated passengers' behavior and the bus driver's conduct—that absolve him of criminal liability. For the reasons stated below, we find no merit in defendant's contentions and we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Indictment*

The indictment filed in May 2013 charged defendant with involuntary manslaughter (§ 192, subd. (b); count 1) and vehicular manslaughter with gross negligence (§ 192, subd. (c)(1); count 2).

After the trial court denied defendant's section 995 motion to set aside the indictment and also denied his section 1538.5 motion to suppress evidence, the case proceeded to a jury trial on both counts in March 2015.

B. *Jury Trial*

1. Prior Bus Incidents

Defendant was the owner of a business called Party Bus of Santa Cruz. One of the party buses used in the business was a black bus that seated 14 passengers and was labeled "Party Bus Santa Cruz" on the door. Before defendant's receptionist stopped working for him in June 2012, she had multiple conversations with defendant regarding party bus passengers getting drunk, using drugs, and dancing on the bus. Defendant responded that "[j]ust people do what they do." Several incidents involving the black party bus occurred prior to the fatal accident on July 27, 2012.

In October 2011, Dave Martone was a passenger on the black party bus on a trip to a distillery in Alameda. There was a party atmosphere on the trip and the passengers were drinking alcohol and moving around the bus. While the bus was traveling on the

freeway, Martone noticed that the door to the bus had not closed all the way and there was a three-inch gap. He could see the road through the gap and hear road noise. When the door problem was brought to the driver's attention, the driver said, "Oh, yeah. That's broken. It's just the way it is." Martone called defendant a couple of days later to share his concern that the condition of the door was dangerous. Defendant did not seem to care and Martone wrote a negative Yelp review of Party Bus of Santa Cruz mentioning that the bus door did not close all the way.

A professional driver, Phyllis Collins, was hired by defendant in February 2012. She drove a group of adults and children to a children's birthday party on the black party bus. Before the trip Collins had checked the operation of the passenger door and noticed that there was a gap. When Collins asked defendant how the door worked since she was not familiar with it, he left without answering. She decided not to drive that bus again or work for defendant.

Russell Van Zanten was employed as a bus driver for Party Bus of Santa Cruz beginning in 2011. Defendant provided him with a check list for a pretrip inspection but did not tell him to inspect the black party bus's passenger door. The door was operated by pushing a button near the driver's seat. When the button was pushed, the door would pop open and slide towards the rear of the bus, like a minivan door. Van Zanten observed the passenger door opening on two trips. In early 2012, the door slid open all the way as he was driving a bus full of passengers on Highway 1 at 55 or 60 miles per hour. When Van Zanten hit the brakes, the door slid back and he thought it was secure. Van Zanten reported to defendant in writing and in a telephone call that the door had opened while he was driving.

Van Zanten hoped the black party bus's passenger door had been fixed but it opened and shut itself a second time in March 2012 when he was driving the bus on Highway 1. Van Zanten reported the incident to defendant, telling him, "The door's not

fixed. It opened up on me again. I don't want to drive this bus anymore." Defendant responded that "they were working on it."

A motor carrier specialist for the California Highway Patrol, Juan Barrios, inspected defendant's buses and maintenance records on several occasions as part of his job. Barrios inspected the black party bus in 2010 and 2011 and did not report any problems with the doors. In his March 20, 2012 inspection report, Barrios stated that defendant's buses passed inspection except for a small exhaust leak. If a driver had reported in April 2012 that the passenger door had opened and needed attention, in Barrios's opinion the bus should not have been used for a passenger trip until the door was fixed.

Another bus driver who worked for defendant in 2011 and 2012 was Dustin Wright. He recalled that it was common for passengers on the black party bus to drink alcohol on board and be intoxicated. He also recalled two incidents in which the passenger door opened. On April 18, 2012, the door opened when he was driving a group of people to a Giants baseball game over Highway 17. As the bus went around a big curve the passenger door popped open and slid back about 36 inches. Wright pulled over, strapped the passenger door closed using straps that were on the bus, and continued the trip. Wright put the straps back on the door for the return trip. After the trip, Wright wrote about the door opening incident in his daily trip report and also mentioned to defendant that the door had popped open and should be fixed. The passenger door opened on a second occasion when Wright was driving the black party bus around town. He was surprised because he thought the door had been fixed, and wrote in his daily notes that the door still needed to be fixed. Defendant never inquired about anything Wright wrote in his trip reports.

Carlos Becerra and a friend rented the black party bus on April 28, 2012, for a group trip to a club in San Francisco. Members of the group had been drinking alcohol before boarding the bus and brought more alcohol with them to drink on the bus. They

were not given any pretrip rules about drinking or dancing on the bus. Becerra made cocktails at the little bar that was located at the front of the bus near the door. At some point Becerra lost his balance, hit the door of the bus, and the passenger door sprang open. Becerra's "back side" fell out of the bus but he was able to pull himself in by grabbing a bar as two passengers helped him. The bus was traveling about 50 miles an hour when Becerra fell out the door. The driver pulled the bus over and the driver and Becerra tried to close the door, which would not lock. The driver eventually fastened the door shut with some kind of tie and the trip continued. On the way back, the door was closed with a tie and the passengers were cautious about standing near it.

On April 29, 2012, a group rented the black party bus for a trip to a rap concert in San Francisco. The driver was Adam Blond. Defendant had previously told Blond that the passenger door to the bus was air powered, and when the bus was driven at highway speeds air could get behind the door and cause it to open. As Blond was driving up Highway 1 to San Francisco the door started to open while passengers were drinking and dancing near it. Blond pulled over and instructed the passengers to stay seated. After he started driving the door opened again. Blond used his belt and tie to close the door. Later, Blond wrote a post-trip report in which he documented the door opening incident. He also spoke with defendant, telling him the door had opened and needed attention. Defendant responded that he was uninterested in giving the group a refund and they had left the bus a mess.

Mesha Dimitruk is a mortgage advisor who rented the black party bus to take local realtors on a trip up Highway 1 to San Francisco on May 24, 2012. There were not enough seats for her 13 guests to sit down and there were no seatbelts. The bus was "very hot, quite smelly, dirty, not the ideal presentation." As the bus was traveling about 45 miles per hour on Highway 1 the passengers seated across from the door of the bus started yelling, "[P]ull over, pull over." After the bus stopped, Dimitruk observed that the passenger door was open wide enough for a person to fall out. The bus driver said,

"Oh, no, not again. They said they fixed that." The driver and a couple of passengers then used straps to close the door. After they arrived in San Francisco Dimitruk texted defendant to let him know that there had been an incident and she wanted to talk to him. Dimitruk then had a telephone conversation with defendant in which she told him that the bus door had come open and she was concerned for passenger safety. Defendant seemed "very disinterested, not concerned," and said that it was "very normal" for these types of buses and she "should Google it."

On July 15, 2012, Jessica Soria joined a group of passengers who were taking the black party bus to Oakland for a country music concert. She recalled that the passenger door to the bus opened on the way to the concert and her friend Robert Bytheway had nearly fallen out. As Bytheway was standing at the top of the steps to the door it swung open. He was able to catch himself and did not fall out the door, which then swung back into a closed position.

2. The Fatal Door Accident

The fatal accident involving the door of the black party bus occurred on July 27, 2012. Coral Stewart had rented the party bus to celebrate a friend's birthday with a group trip to a country music concert that evening at the Shoreline Amphitheatre in Mountain View. The bus picked up some members of the large group at a house where they had been eating and drinking alcohol. More alcohol was brought on board the bus. The only rule given to Stewart by the bus driver was an instruction not to break the glass cups supplied on the bus or she would have to pay for them.

More passengers were picked up when the bus made two restroom stops off Highway 17. During the stops Stewart noticed that the passenger door was not staying shut. She alerted the bus driver who was able to shut the door. When the bus got back on the freeway, Stewart observed there was a gap between the bottom of the door and the bottom step. On the way to the concert, Stewart noticed another passenger, Bryan

Larson, pouring beer through the gap. She also noticed that a passenger named "Paige"[2] was intoxicated and causing some kind of altercation between Noland and Larson, who was Noland's boyfriend.

When the bus arrived at Shoreline Amphitheatre the group broke up. Stewart and other members of the group were drinking alcohol during the concert. After the concert ended, Stewart, Noland, and another member of the group walked to a bar where everyone was supposed to meet for the trip back in the bus. At the bar, Stewart and Noland had a good time eating, drinking beer, and dancing.

On the trip back, an altercation occurred between some of the young men in the back of the bus. Stewart was sleeping and did not recall anything else happening until the bus ran over something on the freeway. Other passengers recalled an altercation between another passenger, Colleen Martinez, and Noland. According to Larsen, Noland and Martinez had a confrontation about Paige, who was Martinez's friend. During the confrontation Noland and Martinez grabbed each other and then fell directly onto the passenger door, which opened and they fell out. Larsen recalled that it happened so fast that there wasn't time to stop their fight. Another passenger, Tanner Clark, recalled that Noland and Martinez were "wrestling" on the ground, and he and Larsen tried unsuccessfully to separate them. Tanner was pulled away by his girlfriend and did not remember anything else happening until the bus stopped.

After Noland and Martinez fell out, the bus pulled over on Highway 17 and Stewart and Larson got off. Larson testified that he carried Noland and Martinez from the middle of the freeway to the side of the road. It was obvious to Larson that Noland was dead. The California Highway Patrol officer who responded to the scene at approximately 11:50 p.m. found the bus driver, Charlene Rymsha, in a state of shock.

[2] We will refer to Paige by her first name since her surname is unclear in the record.

Defendant arrived at the scene at about 1:30 a.m. When the officer told him there had been a fatality and the bus was going to be seized for evidence, defendant's reaction was to ask who was going to pay for his loss of revenue.

Martinez does not remember the bus ride back from the concert except for her hair being pulled, the door to the bus opening, and being tossed onto the roadway. She survived the accident but sustained serious injuries.

3. Testimony of Bus Driver Charlene Rymsha

Rymsha started working as a driver for Party Bus of Santa Cruz in 2011. She noted on a bus driver vehicle inspection form dated July 4, 2011, that there were a couple of issues with the passenger door on the black party bus that was later involved in the fatal accident. Defendant told her "not to write all of this stuff down" and to talk to him instead.

Rymsha drove the black party bus several times. A few months before the fatal door incident, Rymsha saw the passenger door opening while she was making a sharp turn off Highway 1. The door opened a couple of inches and then closed shut. At some point she had a conversation with defendant about the passenger door opening, and he responded with words to the effect that he knew about it and she should carry on. Defendant told her there were nylon straps she could use to keep the door closed and showed her how to use them. Rymsha knew the straps were on the bus, but defendant also told her that she could not keep the door strapped for the duration of a trip due to safety regulations.

Defendant assigned Rymsha to drive the black party bus on July 27, 2012, for the Stewart party's trip to the Shoreline Amphitheatre for a country music concert. Rymsha checked the operation of the passenger door during her pretrip inspection of the bus. After picking up the passengers, Rymsha introduced herself and told them that a broken glass would cost $2. On the way to the concert Rymsha stopped the bus twice, once for a

restroom break and once to pick up more passengers. There were no problems with passenger door during those stops.

Rymsha picked up the passengers after the concert and on the trip back she observed that the passengers were loud and rowdy. She smelled marijuana and wanted to tell them to stop but the music was excessively loud. When she stopped the bus at the Lark Avenue exit from Highway 17 to let passengers off she told the remaining passengers to turn the music down and that marijuana smoking was not allowed.

After Rymsha drove the bus back onto Highway 17 she heard loud yelling and the sound of passengers fighting. The bus did not have a mirror that allowed the driver to see what was going on in the bus. Rymsha would have had to turn nearly her whole body and take her eyes off the road to see the whole bus. In her peripheral vision, Rymsha saw two women on the floor fighting. She also saw Noland's boyfriend on top of Noland and heard him say, "[S]top fighting." When Rymsha looked again she saw the passenger door open three or four inches. (5 RT 746:17)~ Someone yelled something like, "[T]hey fell out." Almost immediately afterwards, Rymsha felt "the thump" of the rear passenger wheels go over one of the women. Rymsha believes that it all happened too quickly for her to do anything about the fight between Noland and Martinez.

Rymsha pulled the bus over to the side of Highway 17 as soon as she could after the women fell out and called 911. She also called defendant and told him there had been a bus accident and two passengers had fallen out the door.

4. Accident Investigation

A forensic pathologist testified that Noland's injuries were consistent with falling from a vehicle, hitting the pavement, and having a tire roll over her head and neck. The autopsy also showed that Noland's blood-alcohol concentration was 0.22 percent and she weighed 114 pounds.

Monica Christopher, a motor carrier specialist for the California Highway Patrol, reviewed defendant's records and spoke with him because the accident of July 27, 2012,

involved a commercial motor vehicle. Among other things, Christopher determined that defendant had failed to provide maintenance records for the black party bus for the period of March 2012 through July 2012. He also failed to provide any records showing that the bus door had been worked on or fixed.

A member of the California Highway Patrol's Multidisciplinary Accident Investigation Team, Edward Lewis, examined the door on the black party bus that had opened on the day of the July 27, 2012 accident. Lewis determined that at the time of the accident the door would close but it would not lock, for three reasons: (1) there was an accumulation of dirt and debris in a door part that prevented locking; (2) the door was air operated and the air pressure was too low; and (3) the button for opening and closing the door did not take the door fully back into lock mode. Lewis also found that the gap between the door and the bottom step was due to a corroded and broken metal support.

After identifying the manufacturer of the passenger door, Lewis obtained the installation and maintenance manual for the door from the manufacturer's website. Following the instructions in the manual, Lewis was able to fix the bus door in 20 to 30 minutes. He then tested the door by throwing his 220-pound body weight against it several times. The door did not open.

C. *Jury Verdict and Sentencing*

On April 8, 2015, the jury rendered its verdict finding defendant guilty on count 1, involuntary manslaughter. (§ 192, subd. (b).)[3] The jury found defendant not guilty on count 2, vehicular manslaughter with gross negligence (§ 192, subd. (c)(1)) and the lesser offense of vehicular manslaughter without gross negligence (§ 192, subd. (c)(2)). The

[3] Section 192, subdivision (b) provides: "Manslaughter is the unlawful killing of a human being without malice. . . . [¶] . . . [¶] . . . Involuntary--in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle."

trial court imposed a four-year sentence, split between three years in custody in the county jail and one year on mandatory supervision with conditions.

III. DISCUSSION

On appeal, defendant contends that his conviction for involuntary manslaughter must be reversed because the evidence was insufficient to show that his alleged negligence as the owner of the company that operated the black party bus was the proximate cause of Noland's death. Defendant asserts that there is evidence of two independent superseding causes—the intoxicated passengers' behavior and the bus driver's conduct—that absolve him of criminal liability. We will begin our evaluation of defendant's contentions with an overview of proximate cause.

A. *Proximate Cause*

"In homicide cases, a 'cause of the death of [the decedent] is an act or omission that sets in motion a chain of events that produces as a direct, natural and probable consequence of the act or omission the death of [the decedent] and without which the death would not occur.' [Citation.] In general, '[p]roximate cause is clearly established where the act is directly connected with the resulting injury, with no intervening force operating.' [Citation.]" (*People v. Cervantes* (2001) 26 Cal.4th 860, 866 (*Cervantes*).) A conviction of involuntary manslaughter therefore "requires a showing that the defendant's conduct proximately caused the victim's death. [Citations.]" (*People v. Butler* (2010) 187 Cal.App.4th 998, 1009 (*Butler*).)

" ' "There may be more than one proximate cause of the death. When the conduct of two or more persons *contributes concurrently as the proximate cause of the death*, the conduct of each is a proximate cause of the death if that conduct was also a substantial factor contributing to the result. A cause is concurrent if it was operative at the time of the death and acted with another cause to produce the death." ' [Citation.]" (*People v. Sanchez* (2001) 26 Cal.4th 834, 847.)

" '[A]n "independent" intervening cause will absolve a defendant of criminal liability. [Citation.] However, in order to be "independent" the intervening cause must be "unforeseeable . . . an extraordinary and abnormal occurrence, which rises to the level of an exonerating, superseding cause." [Citation.] On the other hand, a "dependent" intervening cause will not relieve the defendant of criminal liability. "A defendant may be criminally liable for a result directly caused by his [or her] act even if there is another contributing cause. If an intervening cause is a normal and reasonably foreseeable result of defendant's original act the intervening act is 'dependent' and not a superseding cause, and will not relieve defendant of liability. [Citation.] '[ ] The consequence need not have been a strong probability; a possible consequence which might reasonably have been contemplated is enough. [ ] The precise consequence need not have been foreseen; it is enough that the defendant should have foreseen the possibility of some harm of the kind which might result from his [or her] act.' [Citation.]" [Citation.]' [Citations.]" (*Cervantes, supra,* 26 Cal.4th at p. 871.)

B. *Standard of Review*

As we have noted, defendant contends that there was insufficient evidence of causation to support his conviction for involuntary manslaughter. In reviewing the sufficiency of the evidence on appeal, we determine whether substantial evidence exists such that any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 575-578 (*Johnson*); see also *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) In making this determination, we presume the existence of every fact the trier of fact could reasonably deduce from the evidence in support of the judgment and resolve conflicts in favor of the prosecution. (*Johnson, supra,* at p. 576.) We do not substitute our evaluation of the credibility of the witness " 'unless there is either a physical impossibility that the testimony is true or that the falsity is apparent without resorting to inferences or deductions. [Citations.]' [Citation.]" (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 578.) The test on appeal is

whether there is substantial evidence that would support a guilty finding. (*People v. Reilly* (1970) 3 Cal.3d 421, 425.) Substantial evidence is evidence that is "reasonable, credible, and of solid value. . . ." (*Johnson, supra,* at p. 578.)

Regarding causation, "[w]hether the defendant's conduct was a proximate, rather than remote, cause of death is ordinarily a factual question for the jury unless ' "undisputed evidence . . . reveal[s] a cause so remote that . . . no rational trier of fact could find the needed nexus." ' [Citation.] A jury's finding of proximate causation will be not disturbed on appeal if there is 'evidence from which it may be reasonably inferred that [the defendant's] act was a substantial factor in producing' the death. [Citation.]" (*Butler, supra,* 187 Cal.App.4th at p. 1010.)[4]

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[4] We note the jury was instructed as follows regarding causation: "The criminal law has its own particular way of defining cause. A cause of death is an act or omission that sets in motion a chain of events that produces a direct, natural, and probable consequence of the act or omission, the death, and without which the death would not occur. [¶] A direct, natural, and probable consequence is a consequence which is normal and is a reasonably foreseeable result of the original act or omission. The consequence need not have been a strong probability. A possible consequence which might reasonably have been contemplated is enough. [¶] Cause is established where the act or omission is directly connected with the resulting injury with no intervening force operating. If an intervening act, event, or force is present, causation is established if either the intervening act, force, or event was foreseeable by the defendant or if the intervening act, force, or even caused an injury of the type which was foreseeable. It is not required that the defendant foresee the particular intervening act, force, or event, nor the manner in which the harm occurred. [¶] If you find that the defendant's conduct was a cause of death, then it is no defense that the conduct of some other person or persons, even the injured or deceased persons, whether negligent or even criminal, contributed to the cause of death. However, an intervening act may be so disconnected and unforeseeable as to be a superseding cause that in such a case the defendant's acts will be regarded at law as not being a cause of death for the injury sustained. [¶] The term superseding cause means an independent event that intervenes the chain of causation [*sic*] producing harm of a kind and degree so far beyond the risk that the defendant should have been foreseen [*sic*] that the law deems it unfair to hold him responsible. [¶] There may be more than one cause of the death. When the conduct of two or more persons contributes concurrently as a cause of death, the conduct of each is a cause of death if that conduct was also a (continued)

C. *Analysis*

Defendant concedes that he was not "the ideal business owner" and there is sufficient evidence that "he was on notice of the problems with the bus's passenger door." However, defendant argues that the bus passengers' behavior constitutes an independent intervening cause that absolves him of criminal liability for Noland's death. According to defendant, it was not foreseeable "at the time he failed to fix the door" that the bus passengers would become rowdy and aggressive and their behavior would ultimately result in the "tragic fight" between Noland and Martinez that led to Noland's death.

Defendant argues further that the conduct of Rymsha, the bus driver, constitutes a second independent intervening cause that absolves him of criminal liability for Noland's death. Defendant maintains that he could not have foreseen that Rymsha would fail to "curb" the bus passengers' rowdy and aggressive behavior and also fail to use the straps that he had provided to secure the door. He asserts that the evidence shows that Rymsha knew the passenger door could open, since it had opened when she was driving the bus on previous trips, and she had used the straps on another occasion to close the door.

We are not convinced by defendant's arguments. As the Attorney General points out, there is sufficient evidence from which we may reasonably infer that defendant's conduct was a substantial factor in causing Noland's death. (See *Butler*, *supra*, 187 Cal.App.4th at p. 1010.) " ' "The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical." [Citation] Thus, "a force which plays only an 'infinitesimal' or 'theoretical'

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substantial factor contributing to the death. A cause is concurrent if it was operative at the moment of the death and acted with another cause to produce the death. [¶] If you find that the defendant's conduct was a cause of death to another person, then it is no defense that the conduct of some other person, even the injured or deceased person, contributed to the death."

part in bringing about injury, damage, or loss is not a substantial factor" [citation], but a very minor force that does cause harm is a substantial factor [citation].' " (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1321-1322.)

The evidence shows, and defendant does not dispute, that several months prior to the fatal accident in July 2012 defendant had knowledge that the passenger door had opened on several occasions when the black party bus was carrying passengers; defendant kept the bus in service despite knowing that the door could open in transit; defendant also knew that party bus passengers were becoming intoxicated and dancing on the bus; defendant made no effort to repair the door and instead provided straps to secure it; the door could be repaired in 20 to 30 minutes using a manual downloaded from the manufacturer's website; and Noland's death was the result of her fall from the open passenger door while the bus was carrying a group of passengers on Highway 17. Further, Rymsha testified that defendant told her that she could not keep the passenger door strapped for the duration of a trip due to safety regulations. On this evidence, we may not disturb the jury's finding of proximate cause because it may reasonably be inferred that defendant's failure to repair the passenger door so that it would remain locked and not open while carrying intoxicated passengers was a substantial factor in producing Noland's death. (See *Butler*, *supra*, 187 Cal.App.4th at p. 1010.)

We are also not convinced by defendant's argument that two intervening causes—the bus passengers' behavior and the bus driver's conduct—constitute independent intervening causes that absolve him of criminal liability for Noland's death. We emphasize that " 'in order to be "independent" the intervening cause must be "unforeseeable . . . an extraordinary and abnormal occurrence, which rises to the level of an exonerating, superseding cause." [Citation.] On the other hand, a "dependent" intervening cause will not relieve the defendant of criminal liability. "A defendant may be criminally liable for a result directly caused by his [or her] act even if there is another contributing cause. If an intervening cause is a normal and reasonably foreseeable result

of defendant's original act the intervening act is 'dependent' and not a superseding cause, and will not relieve defendant of liability. [Citation.]" ' " (*Cervantes, supra*, 26 Cal.4th at p. 871.)

Based on the evidence in this case, neither the bus passengers' rowdy and aggressive behavior, nor the altercation between Noland and Martinez, can be deemed an "unforeseeable . . . an extraordinary and abnormal occurrence" and thus an independent intervening cause. (See *Cervantes, supra*, 26 Cal.4th at p. 871.) It was undisputed that the bus passengers had hired a party bus to transport them to a country music concert for the purpose of traveling together to celebrate a birthday and to drink alcoholic beverages en route. The evidence further showed that group travel on the black party bus frequently involved the passengers drinking alcoholic beverages before and during the trip and moving around the bus. Therefore, it was reasonably foreseeable, and not "an extraordinary and abnormal occurrence," that bus passengers could become intoxicated and engage in aggressive and unsafe behavior and fall out the faulty passenger door when it opened on the highway. (See *ibid*.)

The conduct of the bus driver, Rymsha, was also reasonably foreseeable and does not constitute an independent intervening cause. According to Rymsha's testimony, although she was aware that defendant had provided straps she could use to close the passenger door, he had told her not to use the straps for the duration of the trip due to safety regulations. Accordingly, it was reasonably foreseeable, and not "an extraordinary and abnormal occurrence," that the faulty passenger door could open because Rymsha did not use the straps to secure it. (See *Cervantes, supra*, 26 Cal.4th at p. 871.) It was also reasonably foreseeable, and not "an extraordinary and abnormal occurrence," that from her vantage point as the bus driver Rymsha would not be able to observe an altercation between passengers in time to stop them from falling out the faulty passenger door. (See *ibid*.)

Defendant's reliance on the decisions in *Cervantes*, *supra*, 26 Cal.4th 860, *People v. Rodriguez* (1960) 186 Cal.App.2d 433 (*Rodriguez*), and *Lewis v. State* (Ala. Crim. App. 1985) 474 So.2d 766 (*Lewis*) for a contrary conclusion is misplaced, since each case is distinguishable.

In *Cervantes*, the defendant was "a member of a street gang, who perpetrated a nonfatal shooting that quickly precipitated a revenge killing by members of an opposing street gang." (*Cervantes*, *supra*, 26 Cal.4th at p. 863.) Our Supreme Court reversed the defendant's conviction for second degree murder, finding that "[t]he willful and malicious murder of [the victim] at the hands of others was an independent intervening act on which defendant's liability for the murder could not be based." (*Id.* at p. 874.) The facts in *Cervantes* are therefore distinguishable from the present case, in which, as we have discussed, neither the bus passengers' behavior nor the bus driver's conduct constitute an independent intervening act that absolves defendant of criminal liability.

In *Rodriguez*, the defendant was convicted of involuntary manslaughter after she left her four children alone at home and one of them died when the house caught fire. (*Rodriguez*, *supra*, 186 Cal.App.2d at p. 435-436.). The appellate court reversed the conviction on the ground that there was no evidence of proximate cause, since "[t]here was no evidence connecting [the] defendant in any way with the fire." (*Id*. at p. 441.) In contrast, in the present case there was ample evidence to connect defendant with the faulty passenger door through which Noland fell to her death.

Finally, in *Lewis*, the victim was a 15-year-old boy who died after playing Russian roulette with the defendant. (*Lewis*, *supra*, 474 So.2d at p. 768-769.) After the defendant put the gun away, the victim apparently retrieved the gun and shot himself. The appellate court reversed the defendant's murder conviction, stating: "[T]he crux of this issue is whether the victim exercised his own free will when he got the gun, loaded it and shot himself. We hold that the victim's conduct was a supervening, intervening cause sufficient to break the chain of causation." (*Id*. at p. 771.) The present case is

distinguishable since, as we have discussed, the behavior of Noland and the other bus passengers did not constitute an independent intervening cause because their behavior was not an extraordinary and abnormal occurrence on the black party bus. (See *Cervantes, supra*, 26 Cal.4th at p. 871.) Moreover, in California "[i]t is well established that a crime victim's contributory negligence is not a defense. [Citations.]" (*People v. Marlin* (2004) 124 Cal.App.4th 559, 569.)

For these reasons, we conclude that there is sufficient evidence of causation to support defendant's conviction for involuntary manslaughter and we will affirm the judgment.

IV. DISPOSITION

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.